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October 6, 2009

**Via Email and LNFS**

Hon. Shira A. Scheindlin  
United States District Judge  
U.S. District Court, Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *City of New York v. ExxonMobil*, 04 CV 3417 (SDNY)

Dear Judge Scheindlin:

The City accepts the Court's proposed Statute of Limitations charge in its entirety, and proposes the following addition to the jury instruction on Injury in light of Mr. Bongiorno's and Mr. Stack's closing remarks on Friday.

To the Injury section of the jury charge, the City proposes the addition of the following sentences immediately preceding the last sentence (the sentence that begins with "It is up to you to determine..."):

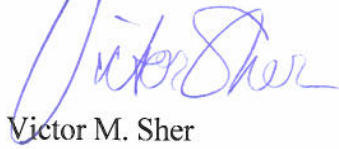
The maximum contaminant level ("MCL") is a regulatory standard that governs water providers' conduct in supplying water to the public, but not defendants' conduct in manufacturing, supplying and selling gasoline containing MTBE. While the mere presence of MTBE at very low levels does not by itself constitute an injury, whether or not the level of MTBE in the water at Station 6 met or exceeded the MCL does not show whether or not ExxonMobil injured the City. Rather, you must decide whether the levels of MTBE in the City's wells injured the City, regardless of the MCL. However, if the level of MTBE in the City's wells is or will be above the MCL, you should find that the City has been injured.

Authority: *In re Methyl Tertiary Butyl Ether (MTBE) Products Liability Litigation*, 458 F.Supp.2d 149, 157-158 (S.D.N.Y. 2006)

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The City respectfully asks the Court to order that this letter be docketed by the Clerk's Office so that it is part of the trial record in this case. We appreciate the Court's time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Victor M. Sher", is written over the typed name.

Victor M. Sher

Cc: All Counsel via LNFS & Email